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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10-021,625 | 12/11/2001 | Donald A. Seielstad | 112703-214 | 5033 |

29156 7590 05/29/2003

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| EXAMINER |
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CORBIN, ARTHUR L

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| ART UNIT | PAPER NUMBER |
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1761

DATE MAILED: 05/29/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/021,625

Applicant(s)

SEIELSTAD ET AL

Examiner

ARTHUR L. CORBIN

Group Art Unit

1761

— The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address —

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- ☒ Responsive to communication(s) filed on 5-5-03, 2-14-02
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 1 1; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-25 is/are pending in the application.
- Of the above claim(s) 9, 15-18, 21-23, 25 is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-8, 10-14, 19, 20, 24 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement

Application Papers

- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).
- ☐ All ☐ Some* ☐ None of the:
 - ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____
 - ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a))

*Certified copies not received: _____

Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 3
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other _____

Office Action Summary

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1. Claims 9, 15-18, 21-23 and 25 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 7.

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 14 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 14 does not further limit claim 8.

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-4, 7, 8, 11-14, 19, 20 and 24 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Cherukuri et al (5,057,328, cols. 5-8, 11, 13 and 14).

Cherukuri et al discloses encapsulating a mixture ^{of} acidulants, including malic, fumaric and tartaric acid, by coating with polyvinylacetate (PVA) ^{having a Mw} of 65,000. Ten percent

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of the encapsulated acidulant mixture is added to a sugarless chewing gum composition which also contains a flavor oil.

7. Claims 5, 6 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cherukuri et al.


Finding the optimum amount of each acidulant (claims 5, 6, ^{and} 10) ~~and 10~~ would require nothing more than routine experimentation by one reasonably skilled in this art. Extruding (claim 22) is a conventional coating technique.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arthur Corbin whose telephone number is 703-308-3850. The examiner can normally be reached on Tuesday-Friday from 10 am to 7:30 pm. The examiner can also be reached on alternate Mondays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 703-308-3959. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

A. Corbin/mn
May 28, 2003


ARTHUR L. CORBIN
PRIMARY EXAMINER
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